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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,530	04/09/2004	Domenick Tucci	TUCCI04-01	1295

7590 10/09/2007  
Anderson & Morishita, L.L.C.  
2725 S. Jones Blvd., Suite 102  
Las Vegas, NV 89146

EXAMINER
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DHILLON, MANJOT K

ART UNIT	PAPER NUMBER
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3714

MAIL DATE	DELIVERY MODE
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10/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/821,530	Applicant(s) TUCCI, DOMENICK	
	Examiner Malina K. Dhillon	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)            | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because some of the numbers are not legible. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins (US 6234485 B1) in view of Hartl (US 6585588 B2).

The patent to Perkins discloses a card game involving a method of playing a poker-type card game. Concerning claims 1, 2, 4, 6, 8, 10, and 12-19, Perkins teaches a method for playing a video casino gaming device comprising providing a video display and a computer processor to control the display, said processor including a first data structure storing data [column 3, lines 18-23] representing at least one deck of playing cards [column 2, lines 65-67].

The patent to Hartl discloses a multiple play high card game with an insurance bet. Hartl also discloses a video gaming device with the listed components [Exemplary Operating Environments]. Perkins teaches the player making a first wager to play the game and prompting play; the processor in response to prompting of play randomly selecting a control value (community card) and randomly selecting and displaying at least two playing cards defining a first holding, then one additional card for a three card holding [column 3, lines 43-46 and column 3 line 60-column 4 line 2]. Limiting the

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control value to a predetermined range of values is something that is well known in the art and is an obvious variant of not applying the limitation since it does not change the basic rules of playing the game.

Perkins teaches the processor comparing the at least two card holding, then one additional card for a three card holding, to said control value (community card) and if said holding has a predetermined relationship to said control value (community card) and/or a winning outcome, issuing a first award to the player **[column 3, lines 51-59 and column 3 line, 60 - column 4, line 2]**, by allowing the player to determine a predetermined relationship of their cards and the control value. Then the player can place another bet, and continue the game. The player would receive one final award at the end of the game if the player has a winning outcome. Perkins teaches the card holding increasing up to five cards, and the process repeating until then **[column 3, line 51- column 4, line 12]**. Perkins teaches an award schedule including a pair and three of a kind **[column 4, line 52 - column 5, line 10]**. Perkins lacks an award being issued each round.

Hartl teaches the processor comparing the at least two card holding, then one additional card for a three card holding, to said control value (dealer's cards) and if said holding has a predetermined relationship to said control value (dealer's cards) and/or a winning outcome, issuing a first award, then second award, to the player **[column 4, lines 59-62 and column 5, lines 4-9]**. The predetermined relationship in this case is the player's cards having a higher rank than the dealer's cards which includes and issuing an award based upon the at least two card holding if the holding is a pair having

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a value at least as high as the control value (dealer's cards) and issuing an award based upon the at least three card final holding if (1) the holding has a higher Poker rank than the at least two card holding and (2) is one of (a) a pair having a value at least as high as the control value (dealer's cards) or (b) a three of a kind **[column 4, lines 59-62 and column 5, lines 4-9]**. These values are increased as the cards dealt are increased **[column 5, lines 1-24]**.

Concerning claims 3 and 9, Perkins teaches the player making a second wager prior to displaying said at least one additional card, and/or the fourth card **[column 3, lines 34-40]**. Hartl also teaches this **[column 5, lines 4-9]**.

Concerning claim 5, Perkins teaches issuing a first award based upon the first wager and a second award as a multiplier of the second wager **[column 4, line 52 - column 5, line 10]**.

Concerning claims 7 and 11, Hartl teaches issuing an award based on at least the second wager if no card has at least the value of the control value (dealer's card) and the at least three card holding is not a three of a kind. Hartl issuing an award based on at least the second wager if the at least four card holding (1) has not resulted in any award to the player and (2) none the card values are least as high as the control value (dealer's card) **[column 2, lines 1-14 and 60-64]**.

It would have been obvious to combine the Perkins poker-type game with the Hartl multiple play high card game with an insurance bet because the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

**Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Malina K. Dhillon whose telephone number is (571) 270-1297. The examiner can normally be reached on Mon. - Thurs., 7 AM - 6 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bob Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Malina K. Dhillon  
Examiner  
Art Unit 3714  
MKD 9/27/07

  
ROBERT E. PEZZUTO  
SUPERVISORY PRIMARY EXAMINER